

**UNITED STATES DISTRICT COURT EASTERN DISTRICT**

**OF NORTH CAROLINA**

*Western Division*

**FILED**

**NOV 14 2022**

PETER A. MOORE, JR., CLERK  
US DISTRICT COURT, EDNC  
BY *ama* DEP CLK

Trevor G Graham PRO SE  
ANN GRAHAM PRO CE

**PLAINTIFFS**

**VS**

Trustee service of Carolina PLLC,  
Wake County Clerk of Superior,  
Shellpoint Mortgage servicing

**DEFENDANTS**

CASE NO. *5:22-cv-*  
*00454-M*

**COMPLAINT AGAINST  
FORCLOSURE OF PROPERTY  
AND VIOLATION OF DUE PROCESS  
RIGHTS  
CIVIL, ACTION**

**JURY TRIAL DEMANDED**

**COMPLAINT**

COMES NOW, this civil action "COMPALINT" is based on the fact of the foreclosure of the plaintiff's real property and violation of the plaintiff's due process vested constitutional rights.

**PARTIES**

1. **Plaintiff** ("plaintiff) Trevor graham Ann graham 1920 Wescott Drive Raleigh NC 27614
2. Trustee service of Carolina (hereinafter referred as **Defendant No1**). PLLC 5431 Oleander Drive, Wilmington NC 28403,  
Trustee service of Carolina PLLC has committed Fraud, violation of due process rights violation of the duties of the trustee.
3. Wake County Clerk of Superior Clerk Special Proceedings department (hereinafter referred as **Defendant No 2**). 316 Fayetteville Street, po box 351, Raleigh NC 27602. Special proceeding department Is a department under legal obligation to proceed with the cases on merits wake county clerk for special proceeding department has not allowed the plaintiff to continue the case despite of this admitted fact that the entire proceedings which were initiated by defendant No.1 was time barred.
4. Shellpoint Mortgage servicing (hereinafter referred as **Defendant No 3**). 75 Beattie Pl Ste 300, Greenville, SC 29601  
Shellpoint Mortgage Servicing Has committed fraud by producing the fraudulent document before the court and committed forgery which an attempt to dispossess the plaintiff from his property fraudulently by an illegal means, right to property which is fundamental and due process rights under 14th and 5th amendment of the constitution

## INTRODUCTION

PLAINTIFF'S alleges and seeks indulgence of this honorable court against violation of due process rights of the plaintiff's vested fundamental due process rights by the defendant the brief facts of the matter in issue are that the Special Procedure Department appeal court resumed session on **Tuesday October 4, 2022**, before the Honorable Stephen R Futrell. The case of Trustees Services Carolina vs Graham was called for hearing and the plaintiff was not given the opportunity to be heard. All the plaintiff's oral and written arguments were ignored by the court. The court only addressed the defendant's claims (**Exhibit A**).

**On the 17<sup>th</sup> of August 2022** foreclosure hearing before the clerk Larry Holder of the Special Procedure Department the clerk did not give the plaintiff an opportunity, to view defendant's documents before the hearing. The day before the hearing the plaintiff file was in possession of the clerk Larry Holder's personal office and were not annexed by the clerks with the other foreclosure files.,.

The special procedure department and the defendants has violated the due process right of the plaintiff protected under 5<sup>th</sup> amendment and 14<sup>th</sup> Amendment of the constitution of the United States by not giving any opportunity to view or to file any evidence to defend themselves. The clerk of the special procedure department has decided against the principle settled by the natural justice system it is settled principle of natural law that, "No one should be Condemned Unheard".

## JURISDICTION AND VENUE

5. Venue is proper because all or a substantial part of the conduct giving rise to the causes of action were committed in North Carolina and the matter at issue involves an issue in between a department and the person.
6. Subject matter jurisdiction is proper as the complaints involves the violation of fundamental rights of the plaintiff and the act of the defendants is in violation of the 14<sup>th</sup> Amendment to the United States Constitution there for pursuant to Amdt14.S1.7.1.1 of the constitution the jurisdiction is proper.

## TABLE OF CONTENTS

1. Certificate of service .....(i)
2. Table of contents.....
3. Table of authorities.....(ii)
4. Introduction .....
5. Jurisdictional statement.....
6. Factual background .....
7. Count one .....
8. Count two .....
9. Count three.....
10. Arguments.....
11. Conclusion

## TABLE OF AUTHORITIES

- 1) 5<sup>th</sup> amendment of United states constitution
- 2) 14<sup>th</sup> amendment of United states constitution
- 3) BLACK'S LAW DICTIONARY (10th ed. 2014).
- 4) BLACK'S LAW DICTIONARY, supra note 1.
- 5) Stephen E. Sachs, Pennoyer Was Right, 95 TEX. L. REV. 1249, 1270 (2017)
- 6) Flower v. Parker, 9 F. Cas. 323, 324 (C.C.D. Mass. 1823) (No. 4891) (Story, C.J.)
- 7) Customary Law, BLACK'S LAW DICTIONARY, supra note 1.
- 8) Hall v. Williams, 23 Mass. (6 Pick.) 232, 238 (1828)
- 9) U.S. CONST. amend. XIV, § 1 ([N])
- 10) See Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 811-12 (1985)
- 11) World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291 (1980)
- 12) See Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 313-14 (1950)
- 13) See, e.g., Cal. Civ. Proc. Code § 410.10
- 14) O' Logan v. Zimmerman Brush Co., 455 U.S. 422, 437 (1982),
- 15) quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965).
- 16) See also Little v. Streater, 452 U.S. 1, 5-6 (1981). 102
- 17) Ragsdale v. Rubbermaid, Inc., 193 F.3d 1235 (11th Cir. 1999) (Tab 2) (citing Citibank, N.A. v. Data Lease Financial Corp., 904 F. 2d 1498, 1503 (11th Cir. 1990)) (Tab 4). Id. 11
- 18) Ragsdale, 193 F.3d at 1238 (citing RESTATEMENT (SECOND) OF JUDGMENTS § 24(2) cmt. b (1980)).



- 1 19) In re Piper Aircraft Corporation, 244 F.3d 1289, 1302 (11th Cir. 2001) (Tab 3). Id. at 1301.
- 2
- 3 20). In re Brose, 242 B.R. 531, 533 n. 7 (Bankr. M.D. Fla. 1999) (holding that a settlement
- 4 agreement approved in a prior bankruptcy case of the debtor precluded relitigation of the
- 5 issues settled therein under the doctrine of res judicata) (Tab 5).
- 6
- 7 21) Hay v. Salisbury, 109 So. 617 (Fla. 1926) (Tab 6)
- 8
- 9 22) 6 I.A. Durbin, Inc. v. Jefferson Nat'l Bank, 793 F.2d 1541, 1549 (11th Cir. 1986) (Tab 7).
- 10
- 11 23) Parklane Hosiery Co., Inc. v. Shore, 439 U.S. 322, 338 (1979).
- 12
- 13 24) I.A. Durbin, 793 F.2d at 1549. 1
- 14
- 15 25) Bush v. Balfour Beatty Bahamas, Ltd., 62 F.3d 1319, 1322 (11th Cir. 1995) (Tab 8).
- 16
- 17 26) Community Bank of Homestead v. Torcise, 162 F.3d 1084, 1086 (11th Cir. 1998) (Tab 9)
- 18 (citing Essenson v. Polo Club Assocs., 688 So. 2d 981, 983 (Fla. 2d DCA 1997)).
- 19
- 20 27) Bush v. Balfour Beatty Bahamas, Ltd., 62 F.3d at 1323 (Tab 8). 22 Id. 23 Id. at 1325, n. 8
- 21 (citing Parklane Hosiery Co., Inc., 439 U.S. 322, 331 (U.S. 1979)).
- 22
- 23 28) Rule 41(a)(1); Parrish v. Uzzell, 41 N.C. App. 479, 483-84 (1979)
- 24
- 25
- 26 29) Graham v. Hardee's Food Sys., Inc., 121 N.C. App. 382, 385 (1996. Rule 41(a)(1); Parrish v.
- 27 Uzzell, 41 N.C. App. 479, 483-84 (1979)
- 28
- 30) Exhibit A) Appeal court transcript

31) Exhibit B) Email from the Bank Of New York Mellon

32) Exhibit C) Declaration of Laurie Hoeltzel and the assignment of Trevor Graham and Ann  
Graham Deed of trust

33) Exhibit D) Mortgage Electronic Servicing system stop tracking the Mortgage

34) Exhibit E) Plaintiff 2 voluntary dismissal Order

35) Exhibit F) Original note and deed of trust

### FACTS

7. The brief background of the case is that the Clerk Larry Holder in the special procedure department, on **August 17<sup>th</sup>, 2022**, at the foreclosure hearing did not follow the rules to foreclose **per rules § 45-21.16. Notice and hearing to foreclose on Appellant's property.** During the hearing the Appellants were not given an opportunity to view any of the plaintiff's documents because none of the plaintiff's documents to foreclose were filed with the court until after the hearing was over.

8. The plaintiff Trevor Graham ask Mr. Holder several times during the hearing to reschedule the hearing to give the Appellant's more time to examine and to view the Plaintiff's documents and he continued to deny the plaintiff his rights. The Due process rights of the Appellants were seriously violated because the plaintiffs were not able to defend themselves against the defendant's claims and the plaintiff have no idea how or when Mr. Holder received the defendant's documents, and the defendant did not Exhibit any of the **6 NC rules**

1       § 45-21.16 Notice and hearing documents to foreclose on plaintiff property on August 17<sup>th</sup>,  
2       2022.

- 3  
4  
5  
6       9. During the hearing Rachel L. Bruyere of Bradley law firm were there representing ShellPoint  
7       Mortgage Servicing. Megan Snrik was there on behalf of the trustee. No one was there  
8       representing the holder of the note Bank of America N.A.
- 9  
10       10. After the hearing the plaintiff Trevor Graham overheard Mr. Holder in the hallway on the  
11       12th floor stating to the attorney of Brock Scott Megan Snrik and the attorney of Bradley law  
12       firm Rachel. Bruyere that next time bring all original documents because this is the last time  
13       that he is going to allow them to use doctored documents.
- 14       11. Mr. Holder also did not address any motions that were filed by the plaintiff weeks before the  
15       hearing.
- 16       12. It is also important to mention that Rachel Bruyere of Bradley Law firm suddenly appear at  
17       the October 4<sup>th</sup> appeal hearing before the Honorable Stephen R Futrell representation the  
18       Bank of New York Mellon.
- 19  
20       13. The debt that Plaintiff presented is a bill from ShellPoint Mortgage Servicing. Shellpoint  
21       mortgage or the Bank of New York Mellon is not the holder of the note (**Exhibit B**).
- 22       14. On **August 16<sup>th</sup>, 2022**, the day before the August 17<sup>th</sup> hearing the plaintiff Trevor Graham  
23       requested a copy of appellant's file by email, and it was sent to the plaintiff by Pamela D  
24       Reese Assistant Clerk, Special Proceedings and none of the documents were in plaintiffs  
25       file.  
26  
27  
28



- 1 15. The plaintiff also went to the special proceeding department in person the same day on  
2 **August 16<sup>th</sup>, 2022** and request a copy of plaintiffs file and again none of the  
3 defendant's/claimants documents were filed with the court. It was also noticed that the  
4  
5  
6  
7 16. Plaintiffs file was not stored with the other files. Ms. Pamela D Reese had to retrieve the  
8 plaintiff t file from in Mr. Holder's personal office.  
9  
10 17. Under the principle of natural justice, a proper hearing and right to contest has not been  
11 granted by the clerk and there are multiple and care and cautions which are necessary when  
12 the person is appearing as a pro se which is also settled by the Superior courts.  
13  
14 18. It is further submitted that The Assignment of Deed of Trust recorded on August **4, 2011**, is  
15 invalid. MERS did not assign the deed of trust which purportedly secured the Note. Thus, the  
16 assignment of the deed of trust was always void and inactive since **March 2007**. The purpose  
17 of an Assignment of Mortgage or Deed of Trust is to memorialize the sale of the Tangible  
18 Promissory Note, however, that did not happen because the mortgage was transferred  
19 illegally.  
20  
21 19. The Assignment of the Deed of Trust took place over 4 years after the closing date of the  
22 CWABS Asset-Backed Certificates Trust 2007-8 of May 31, 2007. The validity of the  
23 signature of Barbara J. Gibbs and her capacity as a Notary is questioned.  
24  
25 20. An Examination has also been performed by a Court Qualified Document Examiner and  
26 Handwriting Expert of multiple documents purporting to contain her signature and Notary  
27 Stamp. This examination has found that there is a pattern of inconsistencies among the  
28 comparison documents, which leaves to question as to which or if any document contains the  
authentic signature of Barbara J. Gibbs. The examiner has stated "It appears that more than

one person in the comparison documents was signing the name of Barbara J. Gibbs. Therefore, there is a strong indication of forgery" (**Exhibit C**). The chain of title of plaintiffs Deed of Trust has not been disclosed nor recorded pursuant to statutory requirements of law. the mortgage electronic servicer stopped tracking the mortgage since **March 15<sup>th</sup>, 2007** (**Exhibit D**). And the plaintiffs have not been billed by the defendant since 2007.

21. The entire matter in issue in the present case is an issue involving illegalities, irregularities and want of limitations. It is settled law that the law is indolent not vigilant and there is proper statutory time of limitation. And the defendant claim has been initiated after lapse of more than 15 years of time which itself is enough to establish that the claim of the defendant is based on illegalities.

22. The right to life and right to property, specifically the residents home/house is a fundamental right, and it is due process rights under the 14<sup>th</sup> and 5<sup>th</sup> amendment of the Constitution of The Unites states.

### COUNT ONE LIMITATION

23. PLAINTIFFS restate and reaver each and every allegation contained in the preceding paragraphs of this Complaint as if fully set forth herein.

24. Under § 45-21.12. Power of sale barred when foreclosure barred.

25. The statute of limitation always starts from the date of cause of action, there for there are multiple reasons on it, firstly the cause of action, accrued on the date of Foreclosure and secondly on the date when the bill was stopped on **March 15, 2007**. Hence the present case is

- 1 not within the limitation prescribed under the statute and the precedents which has been cited  
2 by superior court and under the North Carolina statute of limitation 3 years is the time period  
3 for the collection of debt that also has elapsed and the two dismissal rules under 41(A) is also  
4 applicable. it is settled by superior court that the two-dismissal rule only prohibits a third  
5  
6 26. Action based on the same claim where there were two prior notices of dismissal by the  
7 defendant the defendant voluntarily dismissed on the **26<sup>th</sup> of October 2018 and again the 18<sup>th</sup>**  
8 **of July 2019 (Exhibit E)**  
9  
10 27. The two-dismissal rule prevents a third filing of any "action based on or including the same  
11 claim" as the two previously dismissed actions.  
12  
13 28. The limitation after the voluntary dismissal, under rule 60(b) the time limitation for the filing  
14 of a fresh lawsuit after voluntary dismissal is one year but this debt collection and foreclosure  
15 proceedings has been filed after elapsed of more than 2 ½ years which also has not filed  
16 within time hence liable to set aside,  
17  
18 29. WHEREFORE: The Plaintiff, seeks to stop the defendant from the foreclosure sale of the  
19 plaintiff's property on the ground of the laws of limitations.  
20  
21

## COUNT TWO

### INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

- 24 1. PLAINTIFFS restate and reaver each and every allegation contained in the preceding  
25 paragraphs of this Complaint as if fully set forth herein.  
26  
27  
28

- 1 2. That due to the illegal, arbitrary claims of the defendants without giving the plaintiffs any due  
2 process of law, the defendant has experienced financial burdens and intentional and emotional  
3 distress there for seeks a monetary judgment.  
4  
5  
6  
7  
8

9 **COUNT THREE**

10 **DECLARATORY JUDGMENT**

- 11 3. PLAINTIFF restate and reaver each and every allegation contained in the preceding  
12 paragraphs of this Complaint as if fully set forth herein.  
13  
14 4. DEFENDANTS' aforementioned conduct was conscious, deliberate, intentional, and/or  
15 reckless in nature and based on fraud.  
16  
17 5. DEFENDANTS' aforementioned conduct was undertaken in a state of mind, which evidence  
18 hatred, ill will and is an attempt to deprive the plaintiff from the peaceful possession of the  
19 plaintiff property.  
20  
21 6. DEFENDANTS' aforementioned conduct evidences a conscious disregard for the rights of  
22 other persons and has a great probability of causing substantial harm and is violation of the  
23 plaintiff's due process rights  
24  
25 7. In this present case the trustee did not send plaintiffs any statement that the trustee is a  
26 neutral party. Megan Srnik the trustee gave an unfair advantage to the other party by  
27 1)violating the evidence rules by not responding to plaintiff motion to challenge the  
28 foreclosure, 2) the plaintiffs request for documents 3) concealing factual evidence from the



1 plaintiffs, 4) ignoring the laws of limitations, 5) violate fiduciary duty by allowing the  
2 defendant to file questionable fraudulent documents as evidence (see assignment of Deed of  
3 trust) and 6) not answering appellants request for discovery 7) not showing any concerns  
4 when appellants challenge the validity of the defendant's claims when the trustee knew that  
5 the defendant's claim is falls and barred by the laws of limitation. The trustee continues to  
6 take sides with the other party by not giving plaintiff a fair chance to present their case.  
7

8  
9 8. Megan Srnik the trustee Admitted on the record that this is the third time that they are  
10 foreclosing on plaintiff's property and still did not advocate on behalf of the plaintiff to make  
11 sure the hearing was fair. The trustee did not advocate on behalf of the Appellants although  
12 the plaintiff did not have the five things to foreclose at the August 17<sup>th</sup>, 2022, foreclosure  
13 hearing  
14

15 9. No one was at the hearing on August 17<sup>th</sup>, 2022, representing the lender. Rachel M.  
16 LaBruyere, Esq from Badley Law firm (defendant) was there representing ShellPoint  
17 Mortgage Servicing and the bill in question is from Shell Point Mortgage and not from the  
18 lender.  
19

20 1) The plaintiff is not the Lender (**Exhibit F**)

21 2) There is no valid debt because the debt is time barred by the statute of limitations.

22 3) The Plaintiff was not in possession of the note on August 17<sup>th</sup>, 2022, at the foreclosure  
23 hearing.  
24

25 10. The responsibility as a trustee in a power of sale foreclosure has a fiduciary duty to both the  
26 debtor and the creditor. In re Foreclosure of Vogler Realty, Inc., 365 N.C. 389, 397 (2012).  
27 The trustee must be impartial in the performance of his or her duties as a disinterested third  
28 party and may not give an unfair advantage to one party to the detriment of the other. *Id.* See



1 also In re Foreclosure by Goddard & Peterson, PLLC, 789 S.E.2d 835, 841 (2016); In re  
2 Foreclosure of Real Property for \$143,600.00, 156 N.C. App. 477, 483 (2003). This duty is  
3 recognized in G.S. Chapter 45, which requires that the notice of hearing include a statement  
4 that the trustee is a neutral party and, while holding that position, may not advocate for the  
5 creditor or the debtor in the foreclosure proceeding. G.S. 45-21.16(c)(7)(b).  
6

7 11. . As a result, PLAINTIFF seeks a declaratory judgment stating the foreclosure as illegal.  
8

### 9 JURISDICTION AND DUE PROCESS

10 The present issue involves the due process right which enshrined under the constitution and federal  
11 court has jurisdiction to entertain the relief claimed the 14<sup>th</sup> amendment to the United States  
12 constitution states All persons born or naturalized in the United States, and subject to the jurisdiction  
13 thereof, are citizens of the United States and of the State wherein they reside. No State shall make or  
14 enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor  
15 shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to  
16 any person within its jurisdiction the equal protection of the laws. But the due process rights of the  
17 plaintiff has been violated by the defendants with an attempt to deprive the plaintiff from their  
18 property and in this regard also the special proceedings department has violated procedural due  
19 process, by not considering the plaintiff's genuine request and doing procedural error of none  
20 production of the documents to the relevant judge,  
21

22 the Supreme Court's decision in Pennoyer, the Court has interpreted the Due Process Clause of the  
23 Fourteenth Amendment<sup>7</sup> to limit the power of state courts to render judgments affecting the personal  
24 rights of defendants who do not reside within the state's territory. Pennoyer converted the issue of  
25 personal jurisdiction into a question of federal constitutional law, allowing a party to obtain direct  
26 review of a state court's judgment in federal court (i.e., review of the judgment on appeal) on the  
27  
28

1 grounds that the state court lacked personal jurisdiction over the party. Under the Supreme Court's  
2 interpretation of the Fourteenth Amendment, a state court that issued a judgment affecting a  
3 nonresident without jurisdiction had violated the constitutional rights of that person by depriving  
4 them of property without due process of law.  
5

### 6 7 8 COLLATERAL ESTOPPEL 9

10 In the present case the concept of Collateral estoppel is also applicable due to two dismissal  
11 rule under the rule of collateral estoppel When claim preclusion does not apply to bar an  
12 entire claim or set of claims, the doctrine of collateral estoppel, or issue preclusion, may still  
13 prevent the litigation of particular issues that were actually litigated and decided in the prior  
14 suit.<sup>16</sup> Collateral estoppel has the two-fold purpose of protecting litigants from the burden of  
15 litigating identical facts and issues with the same party and promoting judicial economy by  
16 preventing needless litigation. The elements of the federal collateral estoppel doctrine are: (1)  
17 the issue at stake must be identical to the one involved in the prior litigation; (2) the issue  
18 must have been actually litigated in the prior suit; (3) the determination of the issue in the  
19 prior litigation must have been a critical and necessary part of the judgment in that action; and  
20 (4) the party against whom the earlier decision is asserted must have had a full and fair  
21 opportunity to litigate the issue in the earlier proceeding.<sup>18</sup> The court must also find that the  
22 burden of persuasion in the later action is not significantly heavier than the burden of  
23 persuasion in the initial proceeding.<sup>19</sup> Under Florida law, the elements of collateral estoppel  
24 are: (1) the identical issue has been fully litigated, (2) by the same parties, and (3) a final  
25 decision has been rendered by a court of competent jurisdiction. But in the present case on  
26  
27  
28

1 different dates the respondent has filed complaints and decided each complaint despite of that  
2 illegality the court has not considered the plaintiff well reasons contentions. Hence the  
3 impugned judgement is liable to be set aside.  
4  
5  
6  
7  
8

### 9 LIMITATIONS

10 **The Foreclosure Notice Is Time Barred by Laws Of Limitation.** The chain of title of  
11 plaintiffs Deed of Trust has not been disclosed nor recorded pursuant to statutory  
12 requirements of law. the mortgage electronic servicer stopped tracking the mortgage since  
13 **March 15<sup>th</sup>, 2007 (exhibit D)** . And the plaintiff has not billed since 2007 and under § 45-  
14 **21.12. Power of sale barred when foreclosure barred** (a) Except as provided in subsection  
15 (b) no person shall exercise any power of sale contained in any mortgage or deed of trust, or  
16 provided by statute, when an action to foreclose the mortgage or deed of trust, is barred by the  
17 statute of limitations  
18  
19

20 It is pertinent to mention here that that the claim is a fraudulent claim and. The statute of  
21 limitation always starts from the date of cause of action, there for there are multiple reasons  
22 on it, firstly the cause of action, accrued on the date of Foreclosure and secondly on the date  
23 when the billing was stopped on **March 15, 2007**. Hence the present case is not within the  
24 limitation prescribed under the statute and the precedents which has been cited by superior  
25 court and under the North Carolina statute of limitation 3 years is the time period for the  
26 collection of debt that also has elapsed and the two dismissal rules under 41(A) is also  
27 applicable. it is settled by superior court that the two-dismissal rule only prohibits a third  
28

1 action based on the same claim where there were two prior notices of dismissal by the  
2 plaintiff.

3 The two-dismissal rule prevents a third filing of any "action based on or including the same  
4 claim" as the two previously dismissed actions. Rule 41(a)(1). See, e.g., *Graham v. Hardee's*  
5 *Food Sys., Inc.*, 121 N.C. App. 382, 385 (1996). Rule 41(a)(1); *Parrish v. Uzzell*, 41 N.C. App.  
6 479, 483-84 (1979). And rule 60 (b) provided the limitation after the voluntary dismissal,  
7

8  
9 under rule 60(b) the time limitation for the filing of a fresh lawsuit after voluntary dismissal in  
10 one year but this debt collection and foreclosure proceedings has been filed after elapsed of  
11 more than 2 years which also has not filed within time hence liable to set aside, as mentioned  
12 Many federal laws contain statutes of limitations that bar plaintiffs from filing civil lawsuits  
13 after a specified time period. 15 U.S.C. § 15b, for example, provides that certain civil antitrust  
14 lawsuit "shall be forever barred unless commenced within four years after the cause of action  
15 accrued and the clock in the present case has been elapsed years ago and now the defendant  
16 have filed any exemption and condonation application. Hence the foreclosure sale of  
17 appellant's property is barred under the laws of limitations.  
18  
19

20 In *Rotkiske*, a debt collector sued a consumer in 2009 to collect an unpaid credit card debt.  
21 Because the debt collector allegedly served the lawsuit on the wrong person, the consumer  
22 was unaware of the lawsuit, and the debt collector obtained a default judgment against him.  
23 The consumer claimed he did not discover that adverse judgment until 2014. Once he finally  
24 learned about the 2009 case, the consumer filed his own  
25 lawsuit against the debt collector in 2015. The consumer specifically claimed that the debt  
26 collector violated the FDCPA by filing the 2009 lawsuit after the applicable statute of  
27 limitations governing debt collection actions had expired.  
28



1 However, the consumer encountered statute of limitations problems of his own. 15 U.S.C. §  
2 1692k(d) requires plaintiffs to file FDCPA lawsuits “within one year from the date on which  
3 the violation occurs. “The debt collector argued that this one-year limitations period had  
4 expired because the alleged FDCPA violation occurred in 2009, but the consumer did not file  
5 his FDCPA suit until six years later. The consumer, however, claimed his suit was timely  
6

7  
8  
9 because the one-year statute of limitations instead ran from the date he discovered the alleged  
10 FDCPA violation—that is, when he learned about the default judgment in 2014.

11 The Supreme Court, in an opinion by Justice Thomas joined by seven other Justices, agreed  
12 with the debt collector and affirmed the lower court’s order dismissing the consumer’s case.

13 The Court first determined that 15 U.S.C. § 1692k(d) unambiguously states that the plaintiff  
14 must bring an FDCPA suit “within one year from the date on which the violation occurs,” not  
15 one year from the date on which the plaintiff discovered the alleged violation. The Court  
16 reasoned that if Congress intended the statute of limitations to run from the date of discovery,  
17 it would have said so explicitly. For example, the Court explained,  
18

19 Congress could have instead drafted 15 U.S.C. § 1692k(d) like 12 U.S.C. § 3416, which  
20 allows a plaintiff to sue to enforce certain financial privacy laws “within three years from the  
21 date on which the violation occurs or the date of discovery of such violation, whichever is  
22 later.” Because Congress did not do so when enacting the FDCPA, the one-year limitations  
23 period ran from the date of the alleged violation itself, and the consumer’s lawsuit was  
24 therefore untimely. Similarly, in the present case the respondent has stopped billing the  
25 plaintiff and the Mortgage Electronic System stopped tracking the loan since **March 15<sup>th</sup>**,  
26 **2007**, and even otherwise the 3-year North Carolina Statute to collect a debt has lapsed years  
27  
28



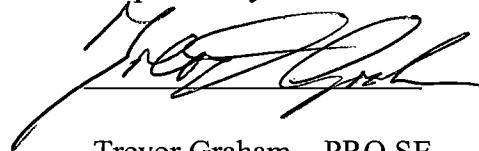
**PRAYER**

**WHEREFORE, PLAINTIFFS DEMANDS,**

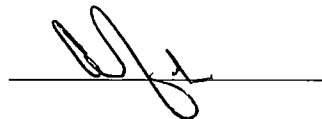
- A. For a declaration, declaring the entire proceedings illegal based on fraud, and declares the foreclosure as illegal.
- B. Direct the defendant not to dispose the plaintiff from the peaceful possession of the real property/only living home.
- C. To protect the due process fundamental rights of the plaintiff.
- D. For a damage in excess of \$250, million
- E. . For costs, interest and \$150,000 attorney's; and,
- F. For any other relief that this court deems just and appropriate.
- G. JURY TRIAL DEMONDED

**November 14, 2022**

Respectfully Submitted



Trevor Graham PRO SE  
1920 Wescott Drive  
Raleigh NC 27614



Ann Graham PRO SE  
1920 Wescott Drive  
Raleigh NC 27614

1  
2  
3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on November 14<sup>th</sup>, 2022, a copy of the foregoing complaint sends  
5 notification of such filing to the parties of record who participate in the CM/ECF system and place a  
6 copy of the same notice in the U.S First Class mail, address to the following individual.  
7

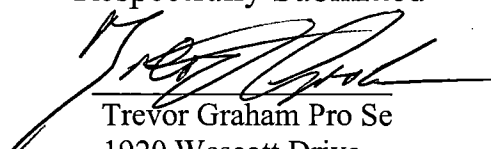
8 Trustee service of Carolina PLLC  
9 5431 Oleander Drive  
10 Wilmington NC 28403  
Phone 910-392-8988

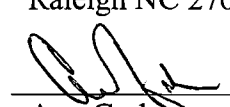
11 Wake County Clerk of Superior  
12 Special Proceedings Department  
13 316 Fayetteville Street,  
14 PO Box 351  
Raleigh NC 27602

15 Shellpoint Mortgage servicing  
16 75 Beattie Pl Suite 300  
17 Greenville, SC 29601  
Phone: (800) 365-7107  
Phone: 919-792-400

18  
19 November 14<sup>th</sup>, 2022

20 Respectfully Submitted

21   
22 Trevor Graham Pro Se  
23 1920 Wescott Drive  
24 Raleigh NC 27614

25   
26 Ann Graham PRO SE  
27 1920 Wescott Drive  
28 Raleigh NC 27614